

PERATA UNANIMOUSLY ELECTED NEW SENATE PRESIDENT PRO TEM

Senator [Don Perata](#) of the East Bay was elected the Senate's new President pro Tem on a unanimous vote of the Senate on Thursday, August 26. All 38 Senators in attendance were co-authors on the resolution (SR 45) electing Perata to the post.



The unanimity of the final vote conflicted markedly with the vote two days earlier in the Senate Democratic Caucus, where the East Bay lawmaker was very narrowly selected over Senate Judiciary Committee Chair [Martha](#)

[Escutia](#) of Whittier after a fierce lobbying campaign on the part of both.

Indeed, according to a variety of sources, Escutia's election may well have been thwarted indirectly by the candidacy of [Sheila Kuehl](#) of Santa Monica. Reportedly, the first round of pro tem voting had Escutia with 12 votes, Perata with 8 and Kuehl with 4, with 13 votes needed for election. With Kuehl committed to vote for Escutia on the second round, it appeared that the Whittier lawmaker had the 13 votes needed for election.

On the second ballot, however, one unidentified Escutia supporter broke ranks, resulting in a 12-12 tie. And on the third ballot, yet another switch from Escutia to Perata put the Oakland Senator over the top by a 13-11 count.

Perata will be the first non-lawyer to hold the Senate's top post in 23 years (both Escutia and Kuehl are attorneys). His election also keeps the leadership of at least one house of the Legislature in the northern part of the state, keeping alive a 30-year tradition.

THREE STATE BAR-RELATED BILLS SIGNED, OTHERS STILL PENDING

Governor Arnold Schwarzenegger has signed into law legislation authorizing the State Bar to obtain necessary funding for 2005 ([SB 1490](#) – Senate Judiciary Committee), along with a bill ([AB 3080](#) -- Assembly Judiciary Committee) requiring the Bar to more aggressively publicize its policy permitting attorneys to have their names removed from the mailing lists that the Bar provides, at cost, to a limited group of outside entities (e.g., local bar

associations, MCLE providers, and the Foundation of the State Bar).

At the same time, the Legislature delivered to the Governor three Bar-related bills in the waning days of the legislative session:

- A bill ([AB 2713](#) – [Pavley](#)) to create a limited exemption from an attorney's duty of confidentiality to his/her clients for governmental attorneys who become aware of improper governmental activity;
- Another bill ([SB 1246](#) – [Burton](#)) to require the Supreme Court and State Bar to develop standards and rules of professional conduct governing the propriety of an attorney appearing before a court where that individual previously served as a judicial officer; and
- Legislation ([AB 1711](#) – Assembly Judiciary Committee) to, among other things, make technical corrections to the State Bar Act.

The first measure, [AB 2713](#), is successor to 2002 legislation ([AB 363](#) – [Steinberg](#)) which was vetoed by then-Governor Gray Davis. The bill would permit (but not require) an attorney who becomes aware of "improper governmental activity," to refer the matter to law enforcement or to another appropriate governmental agency, provided the attorney has first tried to maintain confidentiality by taking specified actions designed to stop the improper activity within the organization – or has determined that urging reconsideration of the action is not reasonable under the circumstances (e.g., would subject the attorney to retaliation), or that reporting the issue to a higher authority in the organization would be futile.

Whether AB 2713 will be signed by Governor Schwarzenegger is unknown. The bill attracted substantial Republican opposition in both legislative houses (58-20 in the Assembly and 26-13 in the Senate), and the new Governor has no track record on the issue.

[SB 1246](#) arose out of an experience last December, when Sacramento appellate justice Daniel M. Kolkey retired from the bench, then immediately appeared before his former colleagues on the 3rd District Court of Appeal just a month after leaving the court. Although the retired jurist's former colleagues voted to recuse themselves en masse in the case, then-Senate President pro Tem Burton, noting the lack of defined standards in the area, elected to introduce legislation to close this perceived gap.

SB 1246 passed both houses of the Legislature by substantial margins (75-5 Assembly, 28-10 Senate).

UNIFORM CIVIL FILING FEES

In response to a joint letter to Chief Justice Ronald George from Senator [Martha Escutia](#) and Assembly Member [Ellen Corbett](#), chairs of the Senate and Assembly Judiciary Committees, respectively, the Administrative Office of the Courts (AOC) is convening an implementation working group to complete a legislative proposal on uniform civil filing fees. The initial meeting of the working group was scheduled for Monday, August 30 in Sacramento.

Participants on the working group include a cross section of interest groups, including local Bar Associations, the California State Associations of Counties, the Council of California County Law Librarians, the State Controller's Office and the Service Employees International Union (SEIU).

The new working group will be refining work already completed by the original Court Fees Work Group. That group made a series of unanimous recommendations for a uniform civil fee structure, which were supported by the State Bar, the Consumer Attorneys of California, and the California Defense Counsel.

However, others, particularly counties and county law libraries, raised a number of issues regarding implementation of uniform fees and the protection of existing revenues. Those concerns effectively stalled efforts to pursue legislation that would have put a uniform fee schedule in place by January 1, 2005.

In their letter to Chief Justice George, Escutia and Corbett urged that a new working group be convened "to focus on the outstanding issues related to implementation and operational issues, such as those that have been raised by the counties and county law libraries." The legislators went on to suggest that the working group should "include representatives of the courts, the civil bar, the counties, county law libraries, local dispute resolution programs, the Department of Finance, the State Controller's Office, and other affected entities . . ."

The working group's Monday meeting in Sacramento marked the beginning of a process that will culminate with a report and statutory

recommendations by December 1, 2004. Ostensibly, the Legislature will act on the group's recommendations in 2005.

LAW LIBRARY TASK FORCE

The Task Force on County Law Libraries continues to convene regularly through face-to-face meetings and periodic conference calls. The group hopes to put together a report and a series of specific recommendations that will be submitted to the Judicial Council and the Legislature no later than January 1, 2005.

The task force was created pursuant to [AB 1095 \(Corbett\)](#) of last year. Under the provisions of the bill, the Judicial Council established the task force and charged it with identifying the needs related to county law library operations and facilities. The task force is also charged with identifying and making recommendations relative to the funding of county law library operations, facility improvements, and expansion.

Specifically, the task force's duties include the following:

- Reviewing the state of existing county law libraries.
- Examining existing standards for county law library operations.
- Documenting the funding mechanisms currently available for the maintenance and operation of county law library facilities.
- Recommending funding sources and financing mechanisms for the support of county law library operations and facilities maintenance.

The nine-member task force, which is chaired by Judge Michael Garcia of the Sacramento Superior Court, has been broken down into three subcommittees which have specific responsibilities, including the preparation of reports for the consideration of the entire group. The task force last met on August 20 and focused on issues related to minimum standards and uniformity.

DEADLINES UPCOMING

- [September 30](#) – Last day for Governor to sign or veto bills submitted to him after August 20.
- [November 30](#) – 2003-04 Legislature adjourns *sine die*.
- [December 6](#) – 2005-06 Legislature convenes.